

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1008 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MITHUN @ MITLO KANUBHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

Ms. SUMAN PAHWA for M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. District Magistrate, Bharuch, passed an order on August 8, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA Act.

#. Detaining authority found from the activities of the detainee that he is a "dangerous person". For coming to a conclusion, the detaining authority took into consideration three offences registered against the detainee with Bharuch City "A" Division Police Station, under the various provisions of the Indian Penal Code and Bombay Police Act. The detaining authority considered the statements of two anonymous witnesses and exercised privilege of not disclosing the identity of the witnesses in public interest in exercise of powers under section 9(2) of the PASA Act. After considering less drastic remedy, the detaining authority exercised powers under section 3 (1) of the PASA on the basis of the satisfaction that this is the only efficacious remedy that can be resorted to for immediately preventing the petitioner from pursuing his illegal and anti-social activities, which are detrimental to public order.

#. The petitioner/detainee has challenged the order of detention on various grounds. The main grounds are that the detaining authority has improperly exercised powers under section 9(2) of the PASA Act which has ultimately affected the right of the detainee of making an effective representation envisaged under Article 22 (5) of the Constitution of India. The second contention is that two representations made to the detaining authority on behalf of the detainee have remained unattended. This has also affected the right of the detainee of making an effective representation. The detention/continued detention therefore, is rendered bad in law and the petition may be allowed.

#. Ms. Pahwa, learned advocate appearing for the petitioner submitted that if the grounds of detention are read, it will be seen that the detaining authority has not recorded subjective satisfaction about the genuineness and correctness of the fear expressed by the witnesses qua the petitioner and despite that, the powers under section 9(2) of the PASA Act are exercised. This has affected the right of the detainee of making an effective representation and the petition may, therefore, be allowed.

4.1 As regards the representations, she submitted that a representation dated 26th January, 2000, was addressed to the District Magistrate, which was received by him on 28th January, 2000. Likewise, another representation dated 14th February, 2000 was also addressed to the District Magistrate, which was received by him on 15th February, 2000. In this representation,

certain documents were demanded. Mr. Pahwa submitted that no documents are supplied and the representations have remained unattended and there is no communication on decision of this representation by the Competent Authority. This non consideration of the representation has affected the right of the detinue of making an effective representation and therefore, the continued detention would be bad. Ms. Pahwa, therefore, submitted that the petition may be allowed and the order of detention may be quashed and set aside.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He submitted that the statements have been verified by the detaining authority on 4th August 1999 and therefore, it cannot be said that this is improper exercise of powers under section 9(2) of the PASA Act by the detaining authority.

5.1 On the second detention, Mr. Dave submitted that the first representation dated 26th January, 2000 was received by the detaining authority on 28th January, 2000. It was sent to the government on 1st February, 2000 which was received by the government 4th February, 2000 and the same was decided on 8th February, 2000. On that very day, the detinue has been communicated rejection of the representation through jail authority.

5.2 As regards the second representation, Mr. Dave submitted that the second representation dated 14th February, 2000 was received by the District Magistrate on 16th February, 2000 which was dispatched by him on 18th February, 2000 to the State Government. The same was received by the State Government on 22nd February, 2000 and it was decided on 23rd February, 2000. The representation came to be rejected by the State Government. As regards demand of documents in that representation namely bail application and bail order, Mr. Dave submitted that the demand is vague. However, if the compilation of the documents supplied to the detinue is seen, the bail application and bail order in respect of the FIR No. I 170/99 and FIR II 121/99, the bail application and bail order have in fact been supplied. So far as the FIR No. I 142/99 is concerned, Mr. Dave has drawn attention of this Court to the fact that the offence is bailable and that the detinue was released on bail by arresting authority and relevant documents in that respect have been supplied. The bail application and the bail order sought for in the representation are non existing document and therefore, the representation was rejected. According to Mr. Dave, therefore, there is no substance in the petition and the

same may be dismissed.

#. Coming to the rival side contentions, it may be noted that the petitioner has raised following contention in the petition.

"The petitioner respectfully submits that the detaining authority has mechanically exercised the powers conferred upon him u/s. 9(2) of the PASA Act. The petitioner states that non supply of name and address of witnesses has affected the right of the petitioner to make an effective representation guaranteed under Art. 22(5) of the Constitution of India. The petitioner states that the detaining authority has mechanically and without proper application of mind accepted the proposal made by the sponsoring authority. The petitioner states that the detaining authority has not made any exercise to verify the genuineness and correctness of the fear of witnesses and has relied upon verified statements and therefore, the order of detention suffers from non application of mind."

Against this, if the grounds are seen, the detaining authority states that he has personally verified the statements of the witnesses. He then further proceeds to state that the petitioner is found to be a "dangerous person" and if the identity of these witnesses are disclosed, there is possibility of risk to the person and property of the witnesses and therefore, the identity of these witnesses is not disclosed in exercise of powers under section 9(2) of the PASA Act. This is all that is record by the detaining authority in the grounds of detention while resorting to powers under section 9(2) of the PASA Act. If the compilation is seen, the detaining authority at the time of verifying the statements has stated thus.

"Examined the witness. His name may be kept secret."

Sd/- 4/8."

Thus, there is nothing to indicate the subjective satisfaction of the detaining authority about the correctness and genuineness of the fear expressed by the witnesses qua the petitioner. In the absence of recording of any subjective satisfaction, exercise of power under section 9(2) of the PASA Act would be improper and would stand vitiated. There also appears not any material of any contemporaneous nature to

indicate that the detaining authority has exercised these powers after considering the various aspects like character, background, temperament, antecedents etc. of the detainee as well as of the witnesses as observed by the Court in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla vs. State of Gujarat, reported in 1981 22 GLR 1186 and therefore, the exercise of powers under section 9(2) of the PASA Act cannot be accepted to be proper. In the result, non disclosure of identity of the witnesses can be said to have resulted into infringement of right of the detainee of making an effective representation and therefore, the detention would be rendered bad in law.

#. As regards the representation aspect, it may be noted that the contention raised by learned counsel for the petitioner about non consideration of the representation does not appear to be correct. As stated by learned AGP after verification from the file of the government, representations have been received and decided and communicated to the detainee and as such, the detention cannot be accepted.

#. In view of the above discussion, the petition deserves to be allowed on the ground of improper exercise of powers under section 9(2) of the PASA Act. The petition is allowed. The impugned order of detention 8th August, 1999 is hereby quashed and set aside. The detainee Mithun @ Mitlo Kanubhai Makwana, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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